

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
March 6, 2009

LAWRENCE K. BAERMAN, CLERK

**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK**



**Order Establishing Pro Se
Prisoner Settlement Program**

GENERAL ORDER #37

On March 6, 2009, the Court's Board of Judges approved the establishment of a pilot Pro Se Prisoner Mediation Program at selected state prisons. The program was implemented on a pilot basis effective March 6, 2009. Because a pilot program in the Northern District of California has shown great promise, it is suggested that the program be implemented in the Northern District of New York involving inmates from all state prisons located in the Northern District of New York.

The full Court having considered and approved a proposal to extend and expand the program at a duly convened meeting on March 6, 2009, the program, to be named the Pro Se Prisoner Settlement Program, shall, effective on this date, apply to the following prisons:

(1) Auburn, and (2) Marcy.

Accordingly, the Pro Se Prisoner Settlement Program order shall be as follows:

1. SCOPE AND PURPOSE OF THE PROGRAM

1.1 Scope. This Order establishes rules for the elective referral of certain prisoner civil rights cases to United States Magistrate Judge Victor E. Bianchini for settlement proceedings at the following state prisons located within the Northern District of New York: (1) Auburn, and (2) Marcy. Other facilities may be added at a later time by the Chief Judge.

1.2 Purpose. The purpose of the Pro Se Prisoner Settlement Program is to help parties determine whether they can voluntarily agree to resolve their case fairly without all the burdensome and time-consuming processes of full litigation. The Court provides this service because it recognizes that litigating civil cases to judgment takes a long time and consumes significant party resources and that, in many cases, it would be better for everyone if matters raised in prisoner complaints could be addressed right away. The purpose of the Pro Se Prisoner Settlement Program is to promote the fair, speedy and economical resolution of these matters.

2. ADMINISTRATION

The Pro Se Prisoner Settlement Program shall be coordinated by the Syracuse Division of the Court. Every six months, Magistrate Judge Bianchini shall submit a report to the Court's Pro Se Law Clerks and Pro Bono Project Committee that identifies by case number each suit referred to the Pro Se Prisoner Settlement Program in which he has hosted settlement discussions and indicates whether the action remains pending.

3. REFERRAL OF CASES TO THE PRO SE PRISONER SETTLEMENT PROGRAM

3.1 Referral to the Pro Se Prisoner Settlement Program. At any time after all parties have been served, any party may request that the judge to whom the case is assigned refer the case to the Pro Se Prisoner Settlement Program; a judge may also issue such an order on his or her own motion. After providing all parties with an opportunity to be heard, the assigned judge, in his or her discretion, may refer a case to the program by means of a written order that specifies the deadline by which the settlement process must be completed. In the order, the judge may stay other activity in the case for that period. The Clerk of the Court shall send a copy of the referral order to the Syracuse Division of the Court. A sample referral order is attached as Exhibit A.

3.2 Effect of Referral. Unless otherwise ordered by the Court, a referral to the Pro Se Prisoner Settlement Program will not limit any party's right to discovery, alter scheduled pre-trial or trial dates or otherwise affect the operation of the Federal Rules of Civil Procedure or any rule of this Court.

4. SCHEDULING OF SETTLEMENT PROCEEDINGS

Upon receiving an order of referral, Magistrate Judge Bianchini shall schedule a settlement proceeding with all interested parties and/or their representatives. The settlement proceedings shall be completed within forty-five (45) days of the date of the referral order or by

another deadline specified in the referral order. The proceedings shall be conducted at Auburn or Marcy prisons with the defendants and/or their representatives attending in person or, at their election, by video teleconference.

5. CONFIDENTIALITY OF SETTLEMENT PROCEEDINGS

All settlement proceedings shall be confidential and no statement made therein shall be disclosed to the assigned judge or to anyone else who is not a party to the case. Statements made in settlement proceedings in this Program shall not be admissible in any subsequent administrative or judicial proceedings. No part of the settlement proceeding shall be reported, or otherwise recorded, nor any settlement briefs filed without the consent of the parties, except for any memorialization of a settlement.

6. REPORT THAT SETTLEMENT PROCEEDINGS ARE CONCLUDED

Within ten days after the conclusion of settlement proceedings in this Program, Magistrate Judge Bianchini shall file with the Court a "Report for Prisoner Settlement Proceeding" in the form attached hereto as Exhibit B and shall also mail copies to the assigned district or magistrate judge, all interested parties and the Court's Pro Se Department. Magistrate Judge Bianchini shall not disclose to the assigned judge or to anyone else who has not been a party to the settlement proceedings any of the parties' settlement communications or any views he may have formed about the merits of the issues in dispute.

IT IS SO ORDERED.

Date: March 6, 2009


Norman A. Mordue
Chief United States District Court Judge

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

No C _____ (PR)

Plaintiff,

v

Defendant.

**ORDER STAYING BRIEFING
SCHEDULE AND REFERRING CASE TO
PRO SE PRISONER SETTLEMENT
PROGRAM; INSTRUCTIONS TO CLERK**

_____/

Plaintiff, a New York prisoner confined at _____ State
Prison filed this pro se civil rights complaint pursuant to 42 USC § 1983. After a review of the
complaint, the Court found plaintiff's allegations that _____
_____,
when liberally construed, state a cognizable claim for _____. On
_____, the Court ordered the complaint served upon defendants and scheduled
the filing of dispositive motions.

Good cause appearing, the instant case is hereby referred to Magistrate Judge
Bianchini for settlement proceedings pursuant to the Pro Se Prisoner Settlement Program. The
proceedings shall take place within 90 days of the date this order is filed. Magistrate Judge
Bianchini shall coordinate a time and date for a settlement proceeding with all interested parties
and/or their representatives and, within ten (10) days after the conclusion of the settlement
proceedings, file with the court a report on the proceedings.

For the foregoing reasons and for good cause shown,

1. The briefing schedule on dispositive motions is hereby stayed and this matter is referred to the Pro Se Prisoner Settlement Program.

2. The clerk shall deliver the court file or a copy thereof, or mediation briefs or both, including a copy of this order, to Magistrate Judge Bianchini in San Diego, California.

IT IS SO ORDERED.

DATED:

☐

United States District Judge

☐

United States Magistrate Judge

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

Plaintiff,

v

Defendant(s).

Case No _____

**REPORT OF PRO SE PRISONER
SETTLEMENT PROCEEDING**

A settlement conference in this matter was held on _____. The results of that proceeding are indicated below:

- (1) The following individuals, parties, and/or representatives participated in the proceeding, each possessing the requisite settlement authority:

- ☐ Plaintiff
☐ Warden or warden's representative
☐ Office of the New York Attorney General
☐ Other: _____

- (2) The following individuals, parties, and/or representatives did not appear:
- _____
- _____

- (3) The outcome of the proceeding was:

☐ The case has been completely settled. The parties agree that a proposed stipulated order for dismissal of this case will be filed with the Court on _____.

☐ The case has been partially resolved and, on or before _____, counsel for defendants shall file a joint stipulation specifying those claims which have been resolved and those that remain to be resolved by the Court.

☐ The parties agree to an additional follow up settlement on _____.

☐ The parties are unable to reach an agreement at this time.

Date: _____

Victor E. Bianchini
United States Magistrate Judge